



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-112, C-570-113]

Certain Collated Steel Staples From the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from KYOCERA SENCO Industrial Tools, Inc. (Senco), the Department of Commerce (Commerce) is initiating country-wide circumvention inquiries to determine whether imports of certain collated steel staples (collated staples), which are completed in Thailand or Vietnam using parts and components from the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on collated staples from China.

DATES: Applicable [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Brian Smith (Thailand) or Shane Subler (Vietnam), Office VIII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 and (202) 482-2000, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(c), Senco filed a circumvention inquiry request alleging that collated staples completed in Thailand or Vietnam using parts and components manufactured in

China are circumventing the orders¹ and, accordingly, should be included within the scope of the orders.²

Scope of the *Orders*

The merchandise covered by these *Orders* is certain collated steel staples. Merchandise covered by these *Orders* is currently classifiable under subheading 8305.20.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive. *See* the Initiation Memorandum for further discussion.³

Merchandise Subject to the Circumvention Inquiries

The circumvention inquiries cover collated staples that have been completed in Thailand or Vietnam, using parts and components from China, that are then subsequently exported from Thailand or Vietnam to the United States.

Initiation of Circumvention Inquiries

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party

¹ *See Certain Collated Steel Staples from the People's Republic of China: Antidumping Duty Order*, 85 FR 43815 (July 20, 2020); and *Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Order*, 85 FR 43813 (July 20, 2020) (collectively, *Orders*).

² *See* Senco's Letters, "Request for Anticircumvention Inquiry Pursuant to Section 781(b) of the Tariff Act of 1930, as Amended," dated November 15, 2022 (Vietnam Circumvention Inquiry Request); and "Request for Anticircumvention Inquiry Pursuant to Section 781(b) of the Tariff Act of 1930, as Amended," dated November 15, 2022 (Thailand Circumvention Inquiry Request).

³ *See* Memorandum, "Certain Collated Steel Staples from the People's Republic of China: Initiation of Circumvention Inquiries on Antidumping and Countervailing Duty Orders," dated concurrently with, and hereby adopted by, this notice (Initiation Memorandum).

supporting these allegations.” Senco alleged circumvention pursuant to section 781(b) of the Act (merchandise completed or assembled in other foreign countries).

According to section 781(b)(1) of the Act, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, Commerce may find merchandise imported into the United States to be covered by the scope of an order if:

(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD order or finding or a CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or finding or is produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD (or CVD) order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether the process of assembly or completion in a foreign country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a foreign country within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or

exporter of the merchandise that was shipped to the foreign country for completion or assembly is affiliated with the person in the foreign country who assembles or completes the merchandise that is subsequently imported into the United States; and (C) whether imports into the foreign country of the merchandise that was completed or assembled have increased after the initiation of the investigation which resulted in the issuance of the order or finding.

Based on our analysis of Senco's circumvention inquiry requests, we determined that Senco satisfied the criteria under 19 CFR 351.226(c), and thus, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted the request and are initiating the requested circumvention inquiries of the *Orders*. For a full discussion of the basis for our decision to initiate the requested circumvention inquiries, *see* the Initiation Memorandum. Moreover, as explained in the Initiation Memorandum, based on the information provided by Senco, we have initiated country-wide circumvention inquiries. Commerce has taken this approach in prior circumvention inquiries where the facts warranted initiation on a country-wide basis.⁴

Consistent with the approach taken in prior circumvention inquiries that Commerce initiated on a country-wide basis, we intend to solicit information from certain companies in Thailand and Vietnam concerning their production of collated staples and their shipments thereof to the United States. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

For companion AD and CVD proceedings, "the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the

⁴ *See, e.g., Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

antidumping proceeding.”⁵ Further, “{o}nce the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.”⁶ Accordingly, once Commerce concludes this circumvention inquiry, Commerce intends to place its final circumvention determination on the record of the companion CVD proceedings.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiries and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiries that were already subject to the suspension of liquidation and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders*. Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce has determined that Senco’s request for circumvention inquiries satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of circumvention inquiries to determine whether U.S. imports of collated staples that have been completed in, and exported from, Thailand or Vietnam using parts and components manufactured in China, are circumventing the *Orders*. We included a description of the products that are subject to the circumvention inquiries, and an explanation of the reasons for Commerce’s decision to initiate these inquiries, in the accompanying Initiation Memorandum.⁷ In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary determinations in these

⁵ See 19 CFR 351.226(m)(2).

⁶ *Id.*

⁷ See Initiation Memorandum.

circumvention proceedings no later than 150 days from the date of publication of this notice in the *Federal Register*.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: December 14, 2022.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Circumvention Initiation Memo

- I. Summary
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